

PART 1909—ACCESS BY HISTORICAL RESEARCHERS AND FORMER PRESIDENTIAL APPOINTEES PURSUANT TO § 4.5 OF EXECUTIVE ORDER 12958

GENERAL

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AUTHORITY: Executive Order 12958, 60 FR 19825, 3 CFR 1996 Comp., p. 333-356 (or successor Orders).

SOURCE: 62 FR 32498, June 16, 1997, unless otherwise noted.

GENERAL

§ 1909.01 Authority and purpose.

(a) **AUTHORITY.** This part is issued under the authority of and in order to implement § 4.5 of Executive Order 12958 (or successor Orders); the CIA Information Act of 1984 (50 U.S.C. 431); sec. 102 of the National Security Act of 1947, as amended (50 U.S.C. 403); and sec. 6 of the Central Intelligence Agency Act of 1949, as amended (50 U.S.C. 403g).

(b) **Purpose.** (1) This part prescribes procedures for:

- (i) Requesting access to CIA records for purposes of historical research, or
- (ii) Requesting access to CIA records as a former Presidential appointee.

(2) Section 4.5 of Executive Order 12958 and these regulations do not create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, officers, or employees.

§ 1909.02 Definitions.

For purposes of this part, the following terms have the meanings indicated:

(a) *Agency* or *CIA* means the United States Central Intelligence Agency acting through the CIA Information and Privacy Coordinator;

(b) *Agency Release Panel* or *Panel* or *ARP* means the CIA Agency Release Panel established pursuant to 32 CFR 1900.41;

(c) *Days* means calendar days when the Agency is operating and specifically excludes Saturdays, Sundays, and legal public holidays. Three (3) days may be added to any time limit imposed on a requester by this part if responding by U.S. domestic mail; ten (10) days may be added if responding by international mail;

(d) *Control* means ownership or the authority of the CIA pursuant to federal statute or privilege to regulate official or public access to records;

(e) *Coordinator* means the CIA Information and Privacy Coordinator who serves as the Agency manager of the historical access program established pursuant to § 4.5 of this Order;

(f) *Director, Center for the Study of Intelligence* or “D/CSI” means the Agency official responsible for the management of the CIA’s various historical programs including the management of access granted under this section;

(g) *Director of Personnel Security* means the Agency official responsible for making all security and access approvals and for effecting the necessary non-disclosure and/or pre-publication agreements as may be required;

(h) *Federal agency* means any executive department, military department, or other establishment or entity included in the definition of agency in 5 U.S.C. 552(f);

(i) *Former Presidential appointee* means any person who has previously occupied a policy-making position in the executive branch of the United States Government to which they were appointed by the current or former President and confirmed by the United States Senate;

(j) *Historian* or *historical researcher* means any individual with professional training in the academic field of history (or related fields such as journalism) engaged in a research project leading to publication (or any similar

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activity such as academic course development) reasonably intended to increase the understanding of the American public into the operations and activities of the United States government;

(k) *Information* means any knowledge that can be communicated or documentary material, regardless of its physical form that is owned by, produced by or for, or is under the control of the United States Government;

(l) *Interested party* means any official in the executive, military, congressional, or judicial branches of government, United States or foreign, or U.S. Government contractor who, in the sole discretion of the CIA, has a subject matter or physical interest in the documents or information at issue;

(m) *Originator* means the CIA officer who originated the information at issue, or successor in office, or a CIA officer who has been delegated declassification authority for the information at issue in accordance with the provisions of this Order;

(n) *This Order* means Executive Order 12958 of April 17 1995 and published at 60 FR 19825-19843 (or successor Orders).

§ 1909.03 Contact for general information and requests.

For general information on this Part, to inquire about historical access to CIA records, or to make a formal request for such access, please direct your communication in writing to the Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC. 20505. Inquiries will also be accepted by facsimile at (703) 613-3007. For general information only, the telephone number is (703) 613-1287. Collect calls cannot be accepted.

§ 1909.04 Suggestions and complaints.

The Agency welcomes suggestions or complaints with regard to its administration of the historical access program established pursuant to Executive Order 12958. Letters of suggestion or complaint should identify the specific purpose and the issues for consideration. The Agency will respond to all substantive communications and take such actions as determined feasible and appropriate.

REQUESTS FOR HISTORICAL ACCESS

§ 1909.11 Requirements as to who may apply.

(a) *Historical researchers*—(1) *In general.* Any historian engaged in a historical research project as defined above may submit a request in writing to the Coordinator to be given access to classified information for purposes of that research. Any such request shall indicate the nature, purpose, and scope of the research project.

(2) *Additional considerations.* In light of the very limited resources for the Agency's various historical programs, it is the policy of the Agency to consider applications for historical research privileges only in those instances where the researcher's needs cannot be satisfied through requests for access to reasonably described records under the Freedom of Information Act or the mandatory declassification review provisions of Executive Order 12958 and where issues of internal resource availability and fairness to all members of the historical research community militate in favor of a particular grant.

(b) *Former Presidential appointees.* Any former Presidential appointee as defined herein may also submit a request to be given access to any classified records which they originated, reviewed, signed, or received while serving in that capacity. Such appointees may also request approval for a research associate but there is no entitlement to such enlargement of access and the decision in this regard shall be in the sole discretion of the Agency. Requests from appointees shall be in writing to the Coordinator and shall identify the records of interest.

§ 1909.12 Designations of authority to hear requests.

The Deputy Director for Administration has designated the Coordinator, the Agency Release Panel, and the Historical Records Policy Board, established pursuant to 32 CFR 1900.41, as the Agency authorities to decide requests for historical and former Presidential appointee access under Executive Order 12958 (or successor Orders) and these regulations.

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§ 1909.13 Receipt, recording, and tasking.

The Information and Privacy Coordinator shall within ten (10) days record each request for historical access received under this Part, acknowledge receipt to the requester in writing and take the following action:

(a) *Compliance with general requirements.* The Coordinator shall review each request under this part and determine whether it meets the general requirements as set forth in 32 CFR 1909.11; if it does not, the Coordinator shall so notify the requester and explain the legal basis for this decision.

(b) *Action on requests meeting general requirements.* For requests which meet the requirements of 32 CFR 1909.11, the Coordinator shall thereafter task the D/CSI, the originator(s) of the materials for which access is sought, and other interested parties. Additional taskings, as required during the review process, shall be accomplished within ten (10) days of notification.

§ 1909.14 Determinations by tasked officials.

(a) *Required determinations.* The tasked parties as specified below shall respond in writing to the Coordinator with recommended findings to the following issues:

(1) That a serious professional or scholarly research project by the requester is contemplated (by D/CSI);

(2) That such access is clearly consistent with the interests of national security (by originator and interested party, if any);

(3) That a non-disclosure agreement has been or will be executed by the requester (or research associate, if any) and other appropriate steps have been taken to assure that classified information will not be disclosed or otherwise compromised (by Director of Personnel Security and representative of the Office of General Counsel);

(4) That a pre-publication agreement has been or will be executed by the requester (or research associate, if any) which provides for a review of notes and any resulting manuscript (by Director of Personnel Security and representative of the Office of General Counsel);

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(5) That the information requested is reasonably accessible and can be located and compiled with a reasonable effort (by D/CSI and originator);

(6) That it is reasonably expected that substantial and substantive government documents and/or information will be amenable to declassification and release and/or publication (by D/CSI and originator);

(7) That sufficient resources are available for the administrative support of the researcher given current mission requirements (by D/CSI and originator); and,

(8) That the request cannot be satisfied to the same extent through requests for access to reasonably described records under the Freedom of Information Act or the mandatory declassification review provisions of Executive Order 12958 (by Coordinator, D/CSI and originator).

(b) *Time.* These responses shall be provided expeditiously on a "first-in, first-out" basis taking into account the business requirements of the tasked offices and consistent with the information rights of members of the general public under the Freedom of Information Act and the Privacy Act. The Agency will utilize its best efforts to complete action on requests under this part within thirty (30) days of date of receipt.

§ 1909.15 Action by hearing authority.

Action by Agency Release Panel. The Coordinator, in his or her capacity as Executive Secretary of the Agency Release Panel, shall place historical access requests ready for adjudication on the agenda at the next occurring meeting of the Agency Release Panel. The Executive Secretary shall provide a summation memorandum for consideration of the members, the complete record of the request consisting of the request and the findings of the tasked parties. The Panel shall meet and decide requests sitting as a committee of the whole on the basis of the eight factors enumerated at 32 CFR 1909.14(a). Decisions are by majority vote of those present at a meeting and shall be based on the written record and their deliberations; no personal appearances shall be permitted without the express permission of the Panel.

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§ 1909.16 Action by appeal authority.

In any cases of divided vote by the ARP, any member of that body is authorized to refer the request to the CIA Historical Records Policy Board which acts as the senior corporate board for the Agency. The record compiled (the request, the memoranda filed by the originator and interested parties, and the previous decision(s)) as well as any memorandum of law or policy the referent desires to be considered, shall be certified by the Executive Secretary of the Agency Release Panel and shall constitute the official record of the proceedings and must be included in any subsequent filings. In such cases, the factors to be determined as specified in 32 CFR 1909.14(a) will be considered by the Board de novo and that decision shall be final.

§ 1909.17 Notification of decision.

The Coordinator shall inform the requester of the decision of the Agency Release Panel or the Historical Records Policy Board within ten (10) days of the decision and, if favorable, shall manage the access for such period as deemed required but in no event for more than two (2) years unless renewed by the Panel or Board in accordance with the requirements of 32 CFR 1909.14(a).

§ 1909.18 Termination of access.

The Coordinator shall cancel any authorization whenever the Director of

Personnel Security cancels the security clearance of a requester (or research associate, if any) or whenever the Agency Release Panel determines that continued access would not be in compliance with one or more of the requirements of 32 CFR 1909.14(a).

PART 1910—DEBARMENT AND SUSPENSION PROCEDURES

Sec.
1910.1 General.

AUTHORITY: 50 U.S.C. 401–442; 50 U.S.C. 403a–403u; 48 CFR ch. 1, subpart 9.4.

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The Central Intelligence Agency (CIA), in accordance with its authorities under the Central Intelligence Agency Act of 1949, as amended, and the National Security Act of 1947, as amended, has an established debarment and suspension process in accordance with subpart 9.402(d) of the Federal Acquisition Regulation (FAR). This process and the causes for debarment and suspension are consistent with those found in FAR 9.406 and 9.407. The rights of CIA contractors in all matters involving debarment and suspension are hereby governed by the provisions of subpart 9.4 of the FAR.

[69 FR 63064, Oct. 29, 2004]